

**CONTRACT #1**  
**RFS # 319.02-012**

**Department of Personnel**

**VENDOR:**  
**Alva Learning Systems, Inc.**

## REQUEST: NON-COMPETITIVE AMENDMENT

RECEIVED

AUG 11 2005

FISCAL REVIEW

APPROVED

Commissioner of Finance &amp; Administration

Date:

EACH REQUEST ITEM BELOW MUST BE DETAILED OR ADDRESSED AS REQUIRED.

1) RFS #	319.02-012	
2) State Agency Name:	Department of Personnel	
EXISTING CONTRACT INFORMATION		
3) Service Caption :	For the provision of developing and hosting web-based training courses for employees of the State of Tennessee	
4) Contractor :	Alva Learning Systems	
5) Contract #	FA-05-1627-00	
6) Contract Start Date : (attached explanation required if date is < 60 days after F&A receipt)	2/15/05	
7) <u>Current</u> Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised :	2/14/10	
8) <u>Current</u> Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised :	\$640,000	
PROPOSED AMENDMENT INFORMATION		
9) <u>Proposed</u> Amendment #	1	
10) <u>Proposed</u> Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised :	2/14/10	
11) <u>Proposed</u> Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised :	\$640,000	
12) Approval Criteria : (select one)	<input checked="" type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state <input type="checkbox"/> only one uniquely qualified service provider able to provide the service	
13) Description of the Proposed Amendment Effects & Any Additional Service :		
<p>The proposed amendment is to realign language from the original contract which was created through a Request for Proposal Process.</p> <p>1. The State seeks to adjust the wording of A.2.6 through A.2.6.3 regarding the source code for each course. The wording would allow for an "or" clause so that the State may at its discretion retain the source code instead of a third party.</p> <p>2. The State also seeks to realign the original funding and better define the payment methodology reflecting the true intent of the contract - C.3). The amended language allows the State to set milestones throughout the development of each course which would determine when the vendor is to be compensated.</p>		

**14) Explanation of Need for the Proposed Amendment :**

It is in the best interest of the State to further define the contract in the two areas noted in #13.

1. Adjusting the wording to A.2.6 would allow the Department to have the source code readily available to test with other software packages owned by the State. This would allow the State to operate its own E-Learning Center on or before the contract ends. As the contract currently is written the State would be required to pay a fee from the Escrow company to obtain copies of source code unless Alva Learning Systems defaulted on the Contract. Or if the fee was not required, the process to receive a copy of the source code would be lengthy. Having the source code held within the State, will allow the Department of Personnel's systems staff to better explore available options for both the State hosting it's own E-learning Center or to explore possibilities involving the State's new ERP system.

2. Adapting the payment methodology will allow the State to more effectively manage the course development process. As importantly, the revised payment methodology allows for payments to be made when stated milestones are attained rather than when the entire course is developed. This was the department's intent with the original language. However, after revisiting the language, it was determined payments could only be made once an entire course is developed and accepted by the State placing an unintended financial burden on the vendor.

**15) Name & Address of Contractor's Current Principal Owner(s) :**

(not required if proposed contractor is a state education institution)

Raymond French, CEO and President  
Alva Learning Systems, Inc.  
10955 Westmoor Drive, Suite 210  
Westminster, CO 80021

**16) Documentation of Office for Information Resources Endorsement :**

(required only if the subject service involves information technology)

select one:

☐

Documentation Not Applicable to this Request

☒

Documentation Attached to this Request

**17) Documentation of Department of Personnel Endorsement :**

(required only if the subject service involves training for state employees)

select one:

☒

Documentation Not Applicable to this Request

☐

Documentation Attached to this Request

**18) Documentation of State Architect Endorsement :**

(required only if the subject service involves construction or real property related services)

select one:

☒

Documentation Not Applicable to this Request

☐

Documentation Attached to this Request

**19) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :**

This contract was procured through a Request for Proposal process. The amendment sought will only further clarify the original contract. Additional funding or services are not requested through the amendment.

**20) Justification for the Proposed Non-Competitive Amendment :**

During the initial five months of working with Alva Learning on the development of the State's first web-based course, it has been determined that the original contract could be refined to more efficiently and effectively define the State's needs as it relates to project management, expenditures and the source code for each course. It is in the best interest of the State to further define the language and provide the flexibility the State requires to move forward in the area of web-based training for state employees.

**REQUESTING AGENCY HEAD SIGNATURE & DATE :**

(must be signed & dated by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR—signature by an authorized signatory will be accepted only in documented exigent circumstances)

*Randy C. Gup*

*8/11/05*

Agency Head Signature

Date



**Phil Bredesen**  
GOVERNOR

STATE OF TENNESSEE  
**DEPARTMENT OF PERSONNEL**  
FIRST FLOOR, JAMES K. POLK BUILDING  
505 DEADERICK STREET  
NASHVILLE, TENNESSEE 37243-0635  
(615) 741-2958

**Randy C. Camp**  
COMMISSIONER

## MEMORANDUM

**TO:** Priscilla Wainwright  
Department of Finance and Administration, Office of Contracts Review

**FROM:** Mark Donner, Director ~~Mark Donner~~  
Division of Administrative Services

**DATE:** August 11, 2005

**SUBJECT:** Authorized Signatory of Non-Competitive Amendment Request

Attached is a request from the Department for authorization to proceed with a non-competitive amendment request with Alva Learning Systems, Inc. Commissioner Camp is not available to personally sign the request letter as required by contracting rules. In an effort to process this amendment in a timely manner and ensure it being placed on the August 24 Fiscal Review Committee calendar, Deputy Commissioner Nat Johnson has signed the request for the Commissioner.

Your favorable consideration of the alternate signatory is appreciated.



# FAX TRANSMITTAL

TO : Bill Ezell, Chief Information Officer  
Office for Information Resources FAX # 532-0471

FROM : Randy C. Camp, Commissioner FAX # 532-0728

DATE : 8/10/05

RFS # 319.02-012

RE : Procurement Endorsement — Alva Learning Systems, Inc.

NUMBER OF FAX PAGES (including cover) : N/A (E-Mailed the information)

The nature and scope of service detailed in the attached service procurement document(s) appears to require Office for Information Resources (OIR) review and support, because the procurement involves information technology or information systems services.

This communication seeks to ensure that OIR is aware of the procurement and has an opportunity to review the matter. Please determine whether OIR is supportive of the procurement. If you have any questions or concerns about this matter, please call Mark Donner at 741-6199.

Please indicate below your response to this proposed procurement, and return this communication at your earliest convenience (note the return FAX number above).

Thank you for your help.

Attachment(s)

OIR Endorsement :

*Randy C. Camp*

8/11/05

OIR Chief Information Officer Signature

Date

*for Bill Ezell*

# C O N T R A C T   S U M M A R Y   S H E E T

<b>RFS Number:</b>	319.02-012	<b>Contract Number:</b>	FA-05-16271-01
<b>State Agency:</b>	Department of Personnel	<b>Division:</b>	Training and Development
<b>Contractor</b>		<b>Contractor Identification Number</b>	
Alva Learning Systems, Inc.		<input checked="checked" type="checkbox"/> V- <input type="checkbox"/> C-	84-1517759
<b>Service Description</b>			
For the provision of developing and hosting web-based training courses for employees of the State of Tennessee			
<b>Contract Begin Date</b>		<b>Contract End Date</b>	
2/15/05		6/30/07	
<b>Allotment Code</b>	<b>Cost Center</b>	<b>Object Code</b>	<b>Fund</b>
319.02	4220	083	11
		<input type="checkbox"/> on STARS	
<b>FY</b>	<b>State Funds</b>	<b>Federal Funds</b>	<b>Total Contract Amount (including ALL amendments)</b>
05			
06		\$500,000	\$500,000
07		\$140,000	\$140,000
<b>Total:</b>		\$640,000	\$640,000
<b>CFDA #</b>	<b>Check the box ONLY if the answer is YES:</b>		
<b>State Fiscal Contact</b>		<b>Is the Contractor a SUBRECIPIENT? (per OMB A-133)</b>	
<b>Name:</b>	Mark Donner	<b>Is the Contractor a VENDOR? (per OMB A-133)</b>	
<b>Address:</b>	1 <sup>st</sup> Fl., James K. Polk Bldg.	<b>Is the Fiscal Year Funding STRICTLY LIMITED?</b>	
<b>Phone:</b>	741-6199	<b>X</b>	
<b>Procuring Agency Budget Officer Approval Signature</b>		<b>Is the Contractor on STARS?</b>	
		<b>X</b>	
		<b>Is the Contractor's FORM W-9 ATTACHED?</b>	
		<b>Is the Contractors Form W-9 Filed with Accounts?</b>	
		<b>X</b>	
<b>COMPLETE FOR ALL AMENDMENTS (only)</b>		<b>Funding Certification</b>	
	<b>Base Contract &amp; Prior Amendments</b>	<b>This Amendment ONLY</b>	Pursuant to T.C.A., Section 9-6-113, I, M. D. Goetz, Jr., Commissioner of Finance and Administration, do hereby certify that there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred.
<b>END DATE →</b>			
<b>FY: 2005</b>	\$300,000	(\$300,000)	
<b>FY: 2006</b>	\$340,000	\$160,000	
<b>FY: 2007</b>		\$140,000	
<b>FY:</b>			
<b>FY:</b>			
<b>Total:</b>	\$640,000	\$0	

## RECEIVED

### AUG 11 2005

## FISCAL REVIEW

**AMENDMENT 1  
TO FA-05-16271-01**

This contract, by and between the State of Tennessee, Department of Personnel, hereinafter referred to as the State, and Alva Learning Systems, Inc., hereinafter referred to as the contractor, is hereby amended as follows:

1. Delete Section A.2.6. in its entirety and insert the following in its place:

Source Code - At the discretion of the State, the Contractor shall either (a) maintain copies of the source code in escrow with an escrow company pre-approved by the State or (b) provide copies of the source code to the State. The Contractor shall pay all fees associated with placing and maintaining the source code in escrow.

2. Delete Section A.2.6.1 in its entirety and insert the following in its place:

Within fifteen (15) calendar days after the State's written acceptance of the implementation of each course and direction given to place the source code in escrow, the Contractor shall submit to the State a letter naming the escrow company that the Contractor intends to use, with the understanding that the State may approve or disapprove the named company. The source code shall be in a SCORM conformant version of the course and include the audio files that accompany the live version of the course. This letter must include the name, address, and full contact information for the recommended escrow company. The State will indicate its approval or disapproval in writing.

Or, at the State's discretion, the contractor shall provide, within fifteen (15) calendar days after the State's written acceptance of the implementation of each course, the source code to the State in a SCORM conformant version of the course as well as the audio files that accompany the live version of the course.

3. Delete Section A.2.6.2. in its entirety and insert the following in its place:

Within fifteen (15) calendar days after the State has provided to the Contractor the written approval of a recommended escrow company, the Contractor shall place the source code in escrow with the approved escrow company. The Contractor shall provide the State with a signed letter from the escrow company in question stating that the code has been placed in escrow and confirming the State's right to obtain the source code directly from the escrow company in the event of Contractor's default as described below. Throughout the term of the contract, the Contractor shall ensure that the source code in escrow is kept current with the State's production environment, matching the state's production version level, including any upgrades, enhancements, or new releases that are applied to the State's system.

If the source code is provided to the State, throughout the term of the contract, the Contractor shall ensure that the source code is kept current with the State's production environment, matching the State's production version level, including any upgrades, enhancements, or new releases that are applied to the State's system.

4. Delete Section A.2.6.3 in its entirety and insert the following in its place:

If for any reason during the term of the contract the Contractor becomes unable to fulfill its obligations as described herein, the Contractor agrees to deliver the source code, if held in escrow, to the State. In the event that the Contractor fails to deliver the source code in a timely manner, as determined by the State, the State may obtain the source code directly from the escrow company.

5. Delete Section C.1. in its entirety and insert the following in its place.

**Maximum Liability.** In no event shall the maximum liability of the State under this Contract exceed five hundred thousand dollars (\$500,000) in FY 2005-06 and one hundred forty thousand dollars (\$140,000) in FY 2006-07. The Service Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Service Rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Service Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

6. Delete Section C.3. in its entirety and insert the following in its place:

<u>SERVICE UNIT</u>	<u>MILESTONE</u>	<u>HOURLY RATE</u>	<u>TOTAL AMOUNT</u>
<b>Course Development</b>			
Cost per developed hour of web based training.	Completion of storyboard for each course upon sign off by the State.	\$5,000 per CEU Hour	
	Completion of pre-audio for each course upon sign off by the State.	\$5,000 per CEU Hour	
	Completion of course development (per course) and receipt of URL (for installation on state website).	\$5,000 per CEU Hour	\$600,000
<b>Participant Fee</b>			
Cost per training participant upon enrollment per course	Participant enrollment per course.	\$4.00 per participant, per course.	\$40,000

The Contractor shall submit monthly invoices, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service or project milestones for the amount stipulated.

The other terms and conditions of this contract not amended hereby shall remain in full force and effect.



**IN WITNESS WHEREOF:**

**ALVA LEARNING SYSTEMS, INC.:**

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**Raymond French, CEO and President**

**Date**

**DEPARTEMNT OF PERSONNEL:**

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**Randy C. Camp, Commissioner**

**Date**

**APPROVED:**

**DEPARTMENT OF FINANCE AND ADMINISTRATION:**

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**M. D. Goetz, Jr., Commissioner**

**Date**

**COMPTROLLER OF THE TREASURY:**

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**John G. Morgan, Comptroller of the Treasury**

**Date**

ORIGINAL

FA 05-16217-01 PA 05-16217-00 011503

## CONTRACT SUMMARY SHEET

RFS Number:	319.02-012	Contract Number:	810.02-047 CP 05-16217-00
State Agency:	Department of Personnel	Division:	Training and Development
Contractor:		Contractor Identification Number:	
Alva Learning Systems, Inc.		X V- <input type="checkbox"/> C-	84-1517759

## Service Description

For the provision of developing and hosting web-based training courses for employees of the State of Tennessee

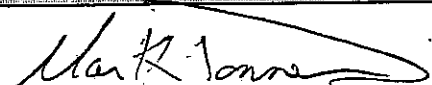
Contract Begin Date:	Contract End Date:
2/15/05	6/30/06

Allotment Code	Cost Center	Object Code	Fund	Grant	Grant Code	Subgrant Code
319.02	4220	083	11	<input type="checkbox"/> on STARS		

FY	State Funds	Federal Funds	Interdepartmental Funds	Other Funding	Total Contract Amount (including ALL amendments)
05			\$300,000		\$300,000
06			\$340,000		\$340,000
Total:			\$640,000		\$640,000

CFDA#

Check the box ONLY if the answer is YES.

State Fiscal Contact		Is the Contractor a SUBRECIPIENT? (per OMB A-133)	
Name:	Mark Donner	Is the Contractor a VENDOR? (per OMB A-133)	
Address:	1 <sup>st</sup> Fl., James K. Polk Bldg.	Is the Fiscal Year Funding STRICTLY LIMITED?	X
Phone:	741-6199	Is the Contractor on STARS?	X
Procuring Agency Budget Officer Approval Signature		Is the Contractor's FORM W-9 ATTACHED?	
		Is the Contractor's Form W-9 Filed with Accounts?	X

## COMPLETE FOR ALL AMENDMENTS (only)

	Base Contract & Prior Amendments	This Amendment ONLY
END DATE →		
FY:		
FY:		
FY:		
FY:		
FY:		
Total:		

## Funding Certification

Pursuant to T.C.A., Section 9-6-113, I, M. D. Goetz, Jr., Commissioner of Finance and Administration, do hereby certify that there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred.

PROCESSED  
MAR 18 2005  
DIRECTOR OF ACCOUNTS  
FEB 25 2005  
MANAGEMENT SERVICES

**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF PERSONNEL  
AND  
ALVA LEARNING SYSTEMS, INC.**

This Contract, by and between the State of Tennessee, Department of Personnel, hereinafter referred to as the "State" and Alva Learning Systems, Inc., hereinafter referred to as the "Contractor," is for the provision of developing and hosting web-based training courses for employees of the State of Tennessee, as further defined in the "SCOPE OF SERVICES."

The Contractor is a for profit corporation. The Contractor's address is:

Alva Learning Systems, Inc.  
10955 Westmoor Drive  
Suite 210  
Westminister, CO 80021

The Contractor's place of incorporation or organization is Colorado.

**A. SCOPE OF SERVICES:**

- A.1 The State's requirements are grouped into three categories: A.2 Content, A.3 Delivery, and A.4 Management and are further defined below.
- A.2 Content
  - A.2 The Contractor shall develop and host up to ten (10) web-based training courses and associated management/recordkeeping. Content for the web-based courses will be based on, but are not limited to, competencies included in the categories of leadership, supervision, human resources, communications, customer service, business and office skills, professional development, team building and quality management.
  - A.2.1 The Contractor shall develop asynchronous courses which are SCORM (Shareable Courseware Object Reference Model) compliant.
  - A.2.2 The Contractor shall recommend the appropriate length of each course using the learning objectives identified by the State. It is anticipated each course will range from three (3) to six (6) hours in length. The Contractor shall conduct needs analysis with State identified subject matter experts prior to beginning the development of each course.
  - A.2.3 The Contractor shall develop each course using adult learning principles including fifteen (15) percent tutorial and eighty-five (85) percent active learning methods including the use of video. The courses shall include a variety of involvement and testing methods including but not limited to click and drag, true and false, multiple choice, situational assessments, sequential organization of information, and fill in the blank. Courses shall be designed so students have the ability to test out of some modules and capability to easily review previous content.
  - A.2.4 The Contractor shall provide, with all content, test(s) to determine course objectives completion. Each course will contain pre and post testing. Each course shall also contain a level 1 evaluation at the completion of each course.

- A.2.5 The contractor shall include at least one vehicle for level III evaluation such as automatically sent follow-up surveys, tests, and other materials at a pre-determined time for each course.
- A.2.6 Source Code in Escrow – The Contractor shall maintain copies of the GCTS source code in escrow with an escrow company pre-approved by the State. The Contractor shall pay all fees associated with placing and maintaining the source code in escrow.
  - A.2.6.1 Within fifteen (15) calendar days after the State's written acceptance of the implementation of each course, the Contractor shall submit to the State a letter naming the escrow company that the Contractor intends to use, with the understanding that the State may approve or disapprove the named company. This letter must include the name, address, and full contact information for the recommended escrow company. The State will indicate its approval or disapproval in writing.
  - A.2.6.2 Within fifteen (15) calendar days after the State has provided to the Contractor the written approval of a recommended escrow company, the Contractor shall place the source code in escrow with the approved escrow company. The Contractor shall provide the State with a signed letter from the escrow company in question stating that the code has been placed in escrow and confirming the State's right to obtain the source code directly from the escrow company in the event of Contractor's default as described below. Throughout the term of the contract, the Contractor shall ensure that the source code in escrow is kept current with the State's production environment, matching the state's production version level, including any upgrades, enhancements, or new releases that are applied to the State's system.
  - A.2.6.3 If for any reason during the term of the contract the Contractor becomes unable to fulfill its obligations as described herein, the Contractor agrees to deliver the source code held in escrow to the State. In the event that the Contractor fails to deliver the source code in a timely manner, as determined by the State, the State may obtain the source code directly from the escrow company.
- A.2.7 The State shall in discussion with the Contractor determine review points throughout the development process for sign off authorization before the Contractor continues the development process.
- A.2.8 The Contractor shall provide a review at the end of each unit.
- A.3 Delivery
  - A.3.1 The Contractor shall provide course content in an alternative media for off-line use. Compact disc is the most acceptable format. The Contractor shall provide for a hardcopy record of course completion of courses taken offline, e.g. a printable test for manual completion or a student activity screen suitable for printing.
  - A.3.2 The Contractor shall provide necessary infrastructure including, but not limited to, web servers, for courseware delivery.
  - A.3.3 The Contractor shall provide for Internet web browser based interactive presentation of course content which must be fully functional from a thin client browser such as Citrix workstation as well as from a conventional PC browser. Courses must be available twenty-four (24) hours a day, seven (7) days a week.
  - A.3.4 The Contractor shall provide "bookmark" capability that allows students to restart the course where they ended a session.

- A.3.5 The Contractor shall provide an entry page for first time students with information giving a complete overview of the features and functions of the web-based training, upon logging on to the web site. The Contractor shall provide in the course delivery triggers for the next step in the course.
- A.3.6 The Contractor shall provide, as a part of the course delivery, screen-print capability and optional audio. Navigation in each course should be easy to use with minimum keystrokes for participants. The Contractor shall also include the use of the "back" button enabling participants to move backwards in each course. The Contractor shall provide automated test scoring capabilities and provide an automated record of course completion for courses delivered on line.
- A.3.7 The Contractor's web-based delivery system shall be able to link web pages containing state rules and policies as needed to carry out the objectives for each course. The Contractor shall provide online references for each course to promote additional self-directed learning. The State will approve all links and references before inclusion in the course materials.
- A.3.8 The Contractor shall include the capability to download any reference manuals developed with course materials in PDF format for each course.
- A.4 Management
- A.4.1 The Contractor shall provide the necessary infrastructure including, but not limited to, web servers, for the recordkeeping/management functions for this training.
- A.4.2 The Contractor shall allow up to five (5) statewide administrators to have system wide capabilities.
- A.4.2.1 The Contractor shall provide for multiple agency administrators, designated by the statewide administrator, to have capabilities for a subset of the student populations and courseware offerings. Agency Administrators shall be able to only perform administrative functions for their subset of the student population.
- A.4.2.2 The Contractor shall allow all agency administrators to enroll new students for their subset of employees.
- A.4.2.3 The Contractor shall provide, on request of a statewide and/or agency administrators detail summary reports of training activity, e.g. student enrollment, courses scheduled, training delivered, course completions, and activity of students.
- A.4.2.4 The Contractor shall provide a means for transfer of currently enrolled students from one agency administrator to another. The Contractor shall provide a means for deleting a student that is no longer the responsibility of an agency, or agency administrator.
- A.4.2.5 The State will provide an identification code and password for each student. The Contractor shall provide for searches on at least two fields (name, agency, email address, etc) to prevent duplicate enrollments. Entry to courses shall be password protected.
- A.4.3 The Contractor shall provide documentation and user manuals for all recordkeeping/management functions of training.
- A.4.4 The Contractor shall accept course completion records, manually entered by agency administrators, e.g. for offline training.

- A.4.5 The Contractor shall provide Help Desk support to statewide administrators during the State's normal business hours. The Contractor shall also provide Help Desk support to participants twenty four (24) hours, seven (7) days a week for training participants. The Help Desk shall be supported by an 800 number.
- A.4.6 The Contractor shall send an email reminder to begin each course once enrolled. The Contractor shall also send participant email reminders to complete courses at appropriate intervals as determined by the State.
- A.4.7 The Contractor shall provide, at the termination of the contract, all student and course activity records to the State in a format acceptable to the State.
- A.5 The Contractor shall not share or sell any participant or administrator personal data including but not limited to name, email address, etc.

B. CONTRACT TERM:

- B.1. Contract Term. This Contract shall be effective for the period commencing on February 15, 2005 and ending on June 30, 2007. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.
- B.2. Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than five (5) years, provided that the State notifies the Contractor in writing of its intention to do so at least one hundred twenty (120) days prior to the contract expiration date. An extension of the term of this Contract will be effected through an amendment to the Contract. If the extension of the Contract necessitates additional funding beyond that which was included in the original Contract, the increase in the State's maximum liability will also be effected through an amendment to the Contract and shall be based upon rates provided for in the original contract.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed three hundred thousand dollars (\$300,000) in FY 2004-05, and three hundred forty thousand dollars (\$340,000) in FY 2005-06. The Service Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Service Rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.
- The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Service Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.
- C.2. Compensation Firm. The Service Rates and the Maximum Liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

- C.3. Payment Methodology. The Contractor shall be compensated based on the Service Rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory completion of units of service or project milestones defined in Section A. The Contractor shall be compensated based upon the following Service Rates:

<u>SERVICE UNIT/MILESTONE</u>	<u>UNIT AMOUNT</u>	<u>TOTAL AMOUNT</u>
<b>Course Development</b> Cost per developed hour of web-based training (10 courses x up to a total of 6 training hours per course = up to 60 total hours of developed training)	\$15,000 per hour X 40 hours of developed training =	\$600,000
<b>Participant Fee</b> Cost per training participant for each of the up to 10 developed courses including management/recordkeeping requirements (fee x up to 20,000 participants over the term of the contract)	\$4.00 per participant X 10,000 participants =	\$40,000

The Contractor shall submit monthly invoices, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service or project milestones for the amount stipulated.

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.6. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.
- C.7. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.8. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least one hundred twenty (120) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination" (sections D.6. and D.7.). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Records. The Contractor shall maintain documentation for all charges against the State under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller



of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

- D.9. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.10. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.11. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.12. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.13. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.14. Force Majeure. The obligations of the parties to this contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.
- D.15. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.16. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising there from, shall be subject to and limited to those rights and remedies, if any, available under **Tennessee Code Annotated**, Sections 9-8-101 through 9-8-407.
- D.17. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

D.18. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.

D.19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.

E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:

Cindy Saladin, Training Manager  
Department of Personnel  
505 Deaderick Street  
James K. Polk Building  
Nashville, TN 37243  
TELEPHONE NUMBER – 615 741-4126  
FACSIMILE NUMBER – 615 532-0728

The Contractor:

Chaz Shively  
Alva Learning Systems, Inc.  
10955 Westmoor Drive, Suite 210  
Westminister, CO 80021  
(303) 487-1400 ext. 1024  
Email: cshively@alvalearning.com

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- E.4. Partial Takeover. The State may, at its convenience and without cause, exercise a partial takeover of any service which the Contractor is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Contractor and a third party, although the Contractor is not in Breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed a Breach of Contract by the State. Contractor shall be given at least 30 days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the State will assume and the date of said assumption. Any Partial Takeover by the State shall not alter in any way Contractor's other obligations under this Contract. The State may withhold from amounts due the Contractor the amount the Contractor would have been paid to deliver the service as determined by the State. The amounts shall be withheld effective as of the date the State assumes the service. Upon Partial Takeover, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.5. State Ownership of Work Products. The State shall have all ownership right, title, and interest, including ownership of copyright, in all work products created, designed, developed, derived, documented, installed, or delivered to the State under this Contract. The State shall have royalty-free and unlimited rights to use, disclose, reproduce, or publish, for any purpose whatsoever, all said work products. The Contractor shall furnish such information and data upon request of the State, in accordance with the Contract and applicable State law.
- E.6. Printing Authorization. The Contractor agrees that no publication coming within the jurisdiction of **Tennessee Code Annotated**, Section 12-7-101, *et. seq.*, shall be printed unless a printing authorization number has been obtained and affixed as required by **Tennessee Code Annotated**, Section 12-7-103 (d).
- E.7. Incorporation of Additional Documents. Included in this Contract by reference are the following documents:
- a. The Contract document and its attachments
  - b. All Clarifications and addenda made to the Contractor's Proposal
  - c. The Request for Proposal and its associated amendments
  - d. Technical Specifications provided to the Contractor
  - e. The Contractor's Proposal

In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these documents shall govern in order of precedence detailed above.

- E.8. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed.
- E.9. Confidentiality of Records. Strict standards of confidentiality of records shall be maintained in accordance with the law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of State law and ethical standards and shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with State law and ethical standards.

The Contractor will be deemed to have satisfied its obligations under this section by

exercising the same level of care to preserve the confidentiality of the State's information as the Contractor exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first paragraph of this section.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

E.10. Copyrights and Patents. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State for infringement of any laws regarding patents or copyrights which may arise from the Contractor's performance of this Contract. In any such action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any final judgment for infringement. The Contractor further agrees it shall be liable for the reasonable fees of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State. The State shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof.

E.11. Date/Time Hold Harmless. As required by **Tennessee Code Annotated**, Section 12-4-118, the contractor shall hold harmless and indemnify the State of Tennessee; its officers and employees; and any agency or political subdivision of the State for any breach of contract caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort or otherwise process dates or times.

E.12. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by **Tennessee Code Annotated**, Section 8-6-106.

E.13. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in **Tennessee Code Annotated**, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated

Retirement System, provides that if a retired member returns to State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to the Tennessee Consolidated Retirement System the amount of retirement benefits the Contractor received from the Retirement System during the period of this Contract.

E.14. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it and its principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining attempting to obtain, or performing a public (Federal, State, or Local) transaction or grant under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (Federal, State, or Local) terminated for cause or default.

IN WITNESS WHEREOF:

ALVA LEARNING SYSTEMS, INC.:

Raymond J. French  
Raymond French, CEO and President

February 14, 2005  
Date

DEPARTMENT OF PERSONNEL:

Randy C. Camp  
Randy C. Camp, Commissioner

FEB 17 2005  
Date

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. Goetz, Jr. IPW  
M. D. Goetz, Jr., Commissioner

FEB 24 2005  
Date

COMPTROLLER OF THE TREASURY:

John G. Morgan  
John G. Morgan, Comptroller of the Treasury

2/28/05  
Date